

**FIFTH REPORT TO THE LEADERS ON THE
U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE
June 29, 2006**

The U.S.-Japan Regulatory Reform and Competition Policy Initiative, now completing its fifth year, was launched in June 2001 by President George W. Bush and Prime Minister Junichiro Koizumi. The Initiative was established as a bilateral forum to promote economic growth through regulatory reform. Each year, the Initiative addresses a broad range of sectoral and cross-sectoral issues, and outcomes are reported on an annual basis through the Initiative's Report to the Leaders.

The Initiative is based on the principle of a two-way dialogue between the Governments of the United States and Japan.

Following the exchange of recommendations between both Governments in December 2005, Working Groups established under this Initiative met to discuss reform in key sectors and areas such as intellectual property, distribution, privatization of public entities, information technology, competition policy, trade and investment-related measures, commercial law, telecommunications, consular affairs, and medical devices and pharmaceuticals. A High-Level Officials Group met in March 2006 to advance progress on a range of issues raised under this Initiative. Input was also received from representatives of the private sector to augment discussions on issues being addressed through the Initiative's Government-to-Government discussions. Following the Working Group and High-Level meetings, this Report to the Leaders was prepared to record progress as well as clarify measures to be taken in the future that respond to the two Governments' recommendations.

This Fifth Report to the Leaders demonstrates progress made across a wide array of issues, including reforms that will help speed regulatory decisions, enhance transparency, improve market access, strengthen the competitive environment, lower barriers to business, and protect personal information. The Report also reflects joint measures to combat the problem of counterfeiting and pirated goods as well as to promote the implementation of transparency standards throughout the Asia-Pacific region. The two Governments affirm their determination to continue to increase cooperation in bilateral, regional, and multilateral fora.

Both Governments reaffirm their determination to further promote regulatory reform and, upon the request of either Government, will meet at mutually convenient times to address the measures contained in this Report.

REGULATORY REFORM AND OTHER MEASURES BY
THE GOVERNMENT OF JAPAN

I. TELECOMMUNICATIONS

A. Promotion of Competition

1. The Government of Japan has implemented a competition policy in the telecommunications field in line with rapid advances of technology, and has thereby facilitated the development of telecommunications markets where broadband services rank among the fastest, most affordable, and most technologically advanced in the world. In Japan, FTTH service as a proportion of broadband Internet subscriptions has been increasing, as has the average transmission speed of such services. Moreover, the number of subscribers to third generation mobile phones and that of subscribed IP telephony exceeded 48 million and 11 million respectively as of the end of March 2006.
2. The Ministry of Internal Affairs and Communications (MIC) set up the “Study Group on a Framework for Competition Rules to Address Progress in the Move to IP” in October 2005, which has been discussing future competition policies in response to the progress in the transition to IP. Specific issues under discussion include examining how current interconnection and other rules should be revised to promote competition in an environment where the telecommunications network is moving from the Public Switched Telephone Network (PSTN) to IP-based networks including frameworks for calculating PSTN interconnection charges during this transition.
3. In November 2005, MIC assigned spectrum in the 1.7GHz and 2GHz bands for three new mobile communications carriers.
4. In December 2005 and April 2006, MIC solicited public comments on “Changing Environment Surrounding Cellular Telephone Business and Future Policy in Response to Such Changes.” MIC will deliberate upon policy measures within FY 2006 including amendments to the “Guideline Concerning Application of the Telecommunications Business Law and the Radio Law Pertaining to MVNOs (Mobile Virtual Network Operators)” adopted in June 2002.
5. In January 2006, MIC Minister Heizo Takenaka established an experts panel on the future direction of Japan’s telecommunications and broadcasting. The panel released its final report in June 2006. This issue is being discussed in the Council on Economic and Fiscal Policy towards the establishment of “Basic Policies for Economic and Fiscal Management and Structural Reform 2006.”

6. The Government of Japan explained the rationale for the requirements that the government hold a specified percentage of NTT shares, and the limit on foreign holdings of such shares.

B. Fixed Interconnection

1. After a public comment procedure and receipt of a report from the Information and Communications Council, MIC revised the Rules for Interconnection Charges in February 2006. Based on these new rules, interconnection rates from April 2006 were established as follows: GC interconnection was set at 5.05 yen per 3 minutes, a decrease of 5.1 percent compared to the last fiscal year; and IC interconnection was set at 6.84 yen per 3 minutes, a decrease of 3.5 percent compared to the last fiscal year.
2. In March 2006, MIC revised ministerial ordinances relating to universal service, after conducting a public comment procedure and considering a report from the Information and Communications Council. In the same month, NTT East and West were designated as Eligible Telecommunications Carriers under this system. Based on the new ordinances, this system (including scope of eligible carriers) will be reviewed within 3 years.
3. The Governments of Japan and the United States reaffirmed their continued intention to maintain any universal service mechanism consistent with WTO Reference Paper commitments.

C. Mobile Interconnection

1. The interconnection rate of NTT DoCoMo has been reduced over the last 9 years, and as a result, this rate has fallen to the low end of rates among developed countries using the Calling Party Pays system. MIC was notified in March 2006 that the rate would be revised downward by 2.6% compared to the last fiscal year for interconnection within the same NTT DoCoMo service area, and by 5.6% compared to the last fiscal year for interconnection with a subscriber located in a distant NTT DoCoMo service area.
2. Telecommunications carriers that have installed Category II designated telecommunications facilities (e.g., NTT DoCoMo and KDDI) continue to be obliged to notify MIC of and publicize interconnection tariffs in accordance with the Telecommunications Business Law.
3. If payment for interconnection which is received by telecommunications carriers that have installed Category II designated telecommunications facilities surpass the sum of reasonable costs and reasonable profit under efficient management, the Minister for Internal Affairs and Communications may order a change to be made in these interconnection tariffs, and any carrier and others may submit complaints or other views to the Minister under the Telecommunications Business Law. Additionally, when a consultation between carriers fails to come to an agreement,

any carrier can make use of the existing legal framework such as petitions for an order (*meirei*) or an award (*saitei*) to the Minister, or applications for mediation (*assen*) or arbitration (*chusai*) to the Telecommunications Business Dispute Settlement Commission.

D. Promotion of Advanced Technologies and Services

1. The Telecommunications Working Group of the Regulatory Reform Initiative held a meeting of government officials and private sector experts and exchanged opinions on resolving interference issues in commercial deployment of high-speed Power Line Communications (PLC) in Japan and Broadband Over Powerline (BPL) in the United States. MIC began holding the “Study Group on High-Speed Power Line Communications” in January 2005 and published the final report of the Study Group in December 2005 after a public comment procedure. The Information and Communications Council is currently deliberating on the limits and the methods of measurement concerning facilities for high-speed PLC.
2. MIC held the “Study Group for Wireless Broadband Promotion” from November 2004 to December 2005. In December 2005, MIC published the final report of the Study Group, including the future prospects for wireless broadband services, and development of specific systems based on those prospects, as well as necessary frequency reallocation and promotion strategies after a public comment procedure. On the basis of this report, MIC consulted with the Information and Communications Council, which began considering technical requirements for broadband mobile wireless access systems using the 2.5GHz band in February 2006. In addition, the Information and Communications Council started deliberations on technical requirements for High-Throughput wireless LAN in March 2006.

E. Promotion of Trade in Telecommunications Equipment

1. The Governments of Japan and the United States will continue formal negotiations with a view to an early conclusion of a Mutual Recognition Agreement (MRA) relating to conformity assessment of telecommunications equipment.
2. Regarding electromagnetic compatibility (EMC), the Governments of Japan and the United States will continue to work together to develop an arrangement that would permit acceptance of results of conformity assessment for information technology (IT) equipment and industrial, scientific and medical (ISM) equipment conducted by accredited Japanese conformity assessment bodies.
3. The Governments of Japan and the United States discussed “Family Approval” of wireless LAN antennas as a request from the Government of the United States. The Governments of Japan and the United States will continue a dialogue on this

issue, taking into consideration policies Japan has established for compliance with technical regulations and the need to address the growing problem in the Japanese market of non-compliant equipment.

- F. **Network Channel Terminating Equipment (NCTE):** Procedures established in the 1990 Letters on Network Channel Terminating Equipment (NCTE), and revised as per the Third Report to the Leaders, ceased to be applied in and after FY2006, after a public comment procedure. Under Article 23 of the Telecommunications Business Law, carriers providing designated telecommunications services are obligated to disclose the technical requirements of NCTE.

II. INFORMATION TECHNOLOGIES

- A. **IT and E-Commerce Policymaking:** The various e-Japan Strategies and Programs have effectively promoted the use of IT and e-commerce throughout Japan's economy to benefit individuals, create more efficient e-government, and foster high value-added business activities. Japan will continue to strive to foster a regulatory environment that further promotes the utilization of IT, including e-commerce, and provide, as appropriate, meaningful opportunities for interested parties to contribute to IT policy formulation processes.
1. New IT Reform Strategy: The New IT Reform Strategy (Strategy) was adopted by the IT Strategy Headquarters (ITSH) on January 19, 2006, after soliciting public comments and giving due consideration to comments it received. The Government of Japan intends to implement the Strategy in a manner that promotes private sector leadership and innovation in IT and e-commerce. In addition, the Government of Japan considers it important not to unduly constrain private sector innovation or market entry, and will continue its efforts to apply this perspective in implementing the Strategy.
 2. Private Sector Input: The Government of Japan acknowledges the importance of seeking private sector input in the development and implementation of IT and e-commerce policies. To help achieve this goal, the Government of Japan will provide appropriate opportunities for interested parties to give input at an early stage in the formulation of IT and e-commerce policies.
 3. Technology Neutrality: In the 2005 Report to the Leaders, the Government of Japan shared the view with the Government of the United States that it is generally important to implement laws, regulations, and guidelines related to IT in a manner that strives not to unduly promote, mandate, or favor specific technologies (technology neutrality), in order to provide maximum flexibility and encourage innovation in the private sector. The Government of Japan will continue to apply this perspective. In addition, the Government of Japan will cooperate closely with the private sector in international standards development activities and give consideration to established international standards in the implementation of its IT policies.

- c. In March 2006 the Consumer Products Safety Commission (CPSC) promulgated a final rule on the Standard for the Flammability (Open Flame) of Mattress Sets. In the preamble to that rule, the CPSC states that it expects that the new mattress flammability standard “will preempt inconsistent state standards and requirements, whether in the form of positive enactments or court created requirements.” The CPSC rule should effectively preclude product liability lawsuits under state law based on claims that the manufacturer was liable for failing to comply with any standard or other regulation that addresses the same risk of occurrence of fire which is not identical to the federal requirement.
 - d. The Government of the United States strongly supports enactment of medical liability reform and asbestos litigation reform legislation to expedite resolution, and curb the cost, of lawsuits. To that end, the Administration will continue to work with the Congress to pass meaningful reform legislation.
3. Punitive Damages: The Government of the United States takes note of the concerns of the Government of Japan regarding punitive damages, and will continue to discuss this issue with the Government of Japan.

II. TELECOMMUNICATIONS

- A. **Participation in the U.S. Wireless Market:** The Government of the United States will continue to provide information to the Government of Japan on the classification between common carriers and non-common-carriers and the distinction between tariffed and non-tariffed services in the United States.
- B. **Certification and Licensing Criteria Deregulation and Reporting Requirements for Foreign Operators**
 - 1. In discussing licensing criteria for foreign carrier entry into the U.S. telecommunications market, the Government of the United States explained that telecommunications licensing conditions are administered with a view to avoiding any unreasonable restrictions on foreign participation in the United States market.
 - 2. The Telecommunications Act of 1996 requires the Federal Communications Commission (FCC) to review the rules issued under the Telecommunications Act that apply to telecommunications service providers to determine whether any regulations are no longer necessary in the public interest due to meaningful economic competition and whether such regulations should be repealed or modified. The Government of the United States welcomes the Government of Japan’s participation in biennial reviews and will seriously consider any recommendation on its merits.
- C. **State-Level Regulations**

1. The Government of the United States continues to provide the Government of Japan relevant information on any NARUC work to harmonize state-level regulations.
2. The Government of the United States will continue a dialogue with the Government of Japan regarding state-level regulations, including licensing procedures, the Government of Japan's interest in regulatory harmonization among states, and adoption of unified reporting requirements.

D. Regulatory Reform in the Broadband Era

1. Dichotomous Classification of Telecommunications Service and Information Service: The Government of the United States will continue to provide information to the Government of Japan on relevant developments relating to any possible review of the regulatory dichotomy between Information Service and Telecommunications Service.
2. IP-Enabled Services: The Government of the United States will continue a dialogue with the Government of Japan on how the FCC implements its June 2005 decision to require that certain providers of voice over Internet protocol (VoIP) phone service supply enhanced 911 (E911) emergency calling capabilities to their customers as a mandatory feature of the service.

E. Universal Service: The Governments of the United States and Japan reaffirmed their continued intention to maintain any universal service mechanism consistent with WTO Reference Paper commitments.

F. Access Charges: The Government of the United States recognizes the complexity inherent in maintaining different kinds of access charges: reciprocal compensation, intra-state access charge and inter-state access charges, and is working towards a unified intercarrier compensation regime, with a view to rationalizing multiple charging mechanisms.

G. Procedures for Processing Export Licenses, TAA Approval and Other Measures Concerning Commercial Satellites

1. The Government of the United States will continue its efforts to minimize delays and maximize transparency of procedures in export licensing and Technical Assistance Agreements (TAA) approval for commercial communications satellites in accordance with U.S. laws, regulations, and policies.
2. The Governments of the United States and Japan have conducted an earnest dialogue on export licensing for commercial satellites. Recognizing the importance of U.S.-Japan relations, the Governments of the United States and Japan will continue this dialogue on this issue.

- H. **Competition in the Navigation Devices Market in the Process of Transition to Digital Television:** The Government of the United States will continue a dialogue with the Government of Japan on how the FCC enforces Section 629 of the Telecommunications Act with a view to ensuring choice in the market for navigation devices (set top boxes).
- I. **Consumer Access to Internet Applications, Content, Devices and Services:** In September 2005, the FCC adopted a policy statement intended to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers.
- J. **Promotion of New Telecommunications Technologies**
1. The Telecommunications Working Group of the Regulatory Reform Initiative held a meeting of government officials and private sector experts and exchanged opinions on resolving interference issues in commercial deployment of high-speed Power Line Communications (PLC) in Japan and Broadband Over Powerline (BPL) in the United States. In October 2004, the Government of the United States introduced rules that have facilitated the commercial deployment of BPL.
 2. By the end of 2006, the FCC intends to auction 90 Megahertz of spectrum for advanced wireless services (in the 1710-1755 MHz and 2110-2155 MHz bands), which will be made available to commercial mobile radio service operators on a technologically-neutral basis.
- K. **Promotion of Trade in Telecommunications Equipment**
1. The Governments of the United States and Japan will continue formal negotiations with a view to an early conclusion of a Mutual Recognition Agreement (MRA) relating to conformity assessment of telecommunications equipment.
 2. Regarding electromagnetic compatibility (EMC), the Governments of the United States and Japan will continue to work together to develop an arrangement that would permit acceptance of results of conformity assessment for information technology (IT) equipment and industrial, scientific and medical (ISM) equipment conducted by accredited Japanese conformity assessment bodies.
- L. **Network Channel Terminating Equipment (NCTE):** Procedures established in the 1990 Letters on Network Channel Terminating Equipment (NCTE), and revised as per the Third Report to the Leaders, ceased to be applied in and after FY2006, after a public comment procedure. Under Article 23 of the Telecommunications Business Law, carriers providing designated telecommunications services are obligated to disclose the technical requirements of NCTE.